Supreme Court of the United States

TERM, 1942

No. 10020

COMMUNITY NATURAL GAS COMPANY,
Petitioner,

v.

RUTH RAVELL,
Respondent.

SUPPORTING BRIEF

To The Honorable The Supreme Court of The United States:

I

OPINIONS OF THE COURTS BELOW

The opinion of the District Court appears in the record, pages 363 to 365. The opinion of the Circuit Court of Appeals appears in the record on pages 386 to 388, and is reported in 125 Federal (2nd) at page 913.

II

JURISDICTION

The opinion of the Circuit Court of Appeals was handed down on February 18, 1942, and the motion for rehearing was overruled March 24, 1942.

Jurisdiction is conferred on the Supreme Court by Section 240, Judicial Code, 28 U.S.C.A. 347.

Jurisdiction is invoked on the grounds:

The Circuit Court of Appeals failed to follow the Texas law:

(a) In holding that, even though the negligence relied on was not a proximate cause, recovery could be had if it were a contributing cause of plaintiff's injuries.

(b) In holding that the result of the gas leaking and explosion could not be foreseen would not prevent recovery.

(c) In failing to follow the holdings of the Supreme Court of the United States, as set forth in *Tompkins* v. *Erie* and other cases, that the federal court must give effect to the law as laid down by the courts of the respective states.

III

STATEMENT OF THE CASE

The facts set forth in the statement contained in the petition are sufficient for the purposes of the brief and in the interest of brevity are not repeated here

but are specifically referred to and made a part hereof as though set out in full.

IV

SPECIFICATIONS OF ERROR

The specifications of error for the purposes of this brief and in the interest of brevity, are found under the subdivision "Questions Presented" of the petition and in the statement above herein entitled "Jurisdiction is invoked on the grounds: (a), (b) and (c)," which are that the Circuit Court of Appeals ignored the law in Texas with reference to foreseeability and proximate cause, and held that neither was necessary for a recovery in an action for negligence, which is contrary to all adjudicated cases in Texas.

ARGUMENT

It is well settled in Texas that for a defendant to be liable for injuries it is necessary that the negligence of defendant be a proximate cause. If the negligence is not a proximate cause, defendant is not liable even though the negligence is a contributing cause. This rule is well stated by *Keaton* in his article, "Negligence, Duty and Causation in Texas," volume 16, Texas Law Review, page 8:

> "Rules or principles of legal cause are devised in order to prevent the defendant from being liable for consequences which his negligence was an actual cause in producing."

The rule is succinctly stated in the following cases:

D. B. & N. O. Ry. Co. v. Barry, 98 Texas 250;

Franklin v. Houston Electric Co., 286 S. W. 578;

Paris & G. N. Ry. Co. v. Stafford, 53 S. W. (2) 1019;

Missouri, Kansas, Texas Ry. Co. v. McLain, 105 S. W. (2) 206;

Carey v. Pure Distributing Corp., 124 S. W. (2) 847, 133 Tex. 31.

The Circuit Court of Appeals erred in holding "that the result of the gas leaking and the explosion could not be foreseen would not prevent recovery." This is contrary to all the negligence cases in Texas for the reason that the Texas law is that before recovery may be had for negligence, the result, or some like result, must have been foreseen by the defendant. The following Texas cases show conclusively that this is the law in Texas:

Missouri, Kansas, Texas Ry. Co. v. McLain, 105 S. W. (2) 206;

Paris & G. N. Ry. Co. v. Stafford, 53 S. W. (2) 1019;

Carey v. Pure Distributing Corp., 124 S. W. (2) 847, 133 Tex. 31.

CONCLUSION

Although this is a controversy between private parties, yet it does involve a very important question and one that is of utmost importance to the judiciary

of the State of Texas and the settling of a conflict between the Texas decisions and the decision of the Fifth Circuit Court of Appeals in the instant case as to the law in Texas, and therefore in our opinion this controversy should be settled by the Supreme Court, by reason of its public interest and the uncertainty that now exists.

Respectfully submitted,

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